

BOARD OF APPEALS CASE NO. 5216

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BEFORE THE

APPLICANTS: Koray & Kathryn Gunduz

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ZONING HEARING EXAMINER

REQUEST: Variance to allow an existing pigeon shed within the required setbacks and a use variance to allow a kennel in the RR District; 1907 Forest Guard Court, Jarrettsville

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 1/23/02 & 1/30/02

HEARING DATE: March 11, 2002

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Record: 1/25/02 & 2/1/02

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Koray & Kathryn Gunduz, are requesting a variance, pursuant to Section 267-26D(2) of the Harford County Code, to allow an existing shed with pigeons less than the required 50 feet from the property line (existing 15 feet), and a use variance, pursuant to Section 267-33, Table I, Permitted Uses-Services, to allow a kennel in an RR District.

The subject parcel is located at 1907 Forest Guard Court, Jarrettsville, Maryland 21084 and is more particularly identified on Tax Map 24, Grid 3B, Parcel 324, Lot 158. The parcel consists of 1.74± acres, is zoned RR/Rural Residential, and is entirely within the Fourth Election District,

Mr. Koray Gunduz appeared and testified that he keeps approximately 35 show pigeons on his property. The pigeons are housed in a shed located on his property in a location as far from his neighbor's property as possible. The Applicant is not a breeder but raises these birds much like dogs are raised for kennel club shows. The birds are imported from Turkey and cost several hundred dollars each. He occasionally flies these birds in races but they are never permitted to simply roam on the property. The birds remain caged for about eight months of the year. The rest of the time they are involved in shows or in racing. The shed is cleaned regularly and waste disposed of properly. The shed does not resemble a coop but rather appears to be any other ordinary shed where tools would be kept (photos, Exhibit No. 1). The shed is located 200 feet from the road and 260 feet from the rear lot line. The neighbor closest to the shed and most impacted along with several other neighbors wrote letters, part of the file, in support of the Applicant's request.

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The Applicant believes his use is harmless to neighbors and that no adverse impacts would result from a variance to place the shed at the location requested.

Mr. Anthony McClune appeared and testified on behalf of the Department of Planning and Zoning. The Department recommends approval of the variance to place the shed closer to the lot line than permitted by Code. The location, according to Mr. McClune is the most appropriate location and moving the shed within the setbacks would not result in an improved condition. According to the witness, allowing the shed to stay where it is will not result in adverse impacts or materially impair the purposes of the Code. As to the use variance, Mr. McClune indicated that the Department was unsure whether a use variance was required or not. Based on the Code definition of a kennel, it appeared that a use variance to operate a kennel may be required. The Code, however, states that when counting animals, birds are counted as 1/10 of a full animal. Therefore, 50 pigeons would only result in 5 animal equivalents, not the 6 required to constitute the definition of kennel.

CONCLUSION:

The Applicants, Koray & Kathryn Gunduz, are requesting a variance, pursuant to Section 267-26D(2) of the Harford County Code, to allow an existing shed with pigeons less than the required 50 feet from the property line (existing 15 feet), and a use variance, pursuant to Section 267-33, Table I, Permitted Uses-Services, to allow a kennel in an RR District.

Section 267-26D(2) of the Code provides:

“Accessory uses in agricultural and residential districts. The following accessory uses shall be permitted in agricultural and residential districts upon issuance of a zoning certificate, unless otherwise specified, in accordance with the following:

- (2) Pens, stalls or runs for animals shall not be located within fifty (50) feet of any adjacent residential lot line. Kennels shall be permitted only as special exceptions.”

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The Harford County Code, pursuant to Section 267-11 permits variances and provides:

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.**
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”**

Harford County Code, Section 267-4, defines a “kennel” as follows:

“Any establishment, not part of an agricultural use, in which six (6) or more domestic animals, such as cats, dogs and other pets, more than six (6) months old are kept, groomed, bred, boarded, trained or sold.”

The generally accepted measure of an “animal unit”, is found in Appendix D, “Calculation of Animal Unit Equivalents”, which is used by the University of Maryland Agricultural Extension Service as a system for relating various species of animals to one standard. The animal unit equivalent for pigeons is .01.

Based on the provisions of the Code and the nature of the Applicant’s hobby, the Hearing Examiner does not find that a use variance is appropriate or necessary and dismisses that portion of the Applicant’s request. The Department of Planning and Zoning was unsure whether a use variance was necessary in this case based on the ambiguity of the Code provisions and suggested this request in the nature of a request for interpretation.

As to the request for a variance, the Hearing Examiner agrees with the Applicant, the Department and the adjoining property owners that the Applicant’s use does not result in adverse impacts to adjoining properties nor would an approval materially impair the purpose of the Code. The Applicant, if not granted a variance would be denied uses commonly enjoyed by others with wider properties, differently configured septic reserve areas or properties without rear drainage and utility easements.

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All of these factors tend to make the property somewhat unique. The location of the shed is the best possible location in terms of neighboring properties. There is simply no other location suitable or desirable on this property and any other location appears to require a variance of some kind.

Based on the totality of the facts presented and the written testimony of the neighboring property owners, the Hearing Examiner recommends approval of the requested variance subject to the following conditions:

1. The Applicants obtain any and all necessary permits and inspections.
2. The number of pigeons housed by the Applicant shall not exceed 50 in number.

Date MARCH 20, 2002

William F. Casey
Zoning Hearing Examiner